

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Crl.Rev.Pet.No. 491 of 2000

**CRA.139/1998 OF SESSIONS COURT, THRISSUR
SC.61/1996 of PRL. ASST. SESSIONS COURT, THRISSUR**

REVN. PETITIONER/APPELLANT/ACCUSED:

**RAJESH KUMAR,
S/O. MADHUSOODANAN,
RESIDING AT RAJESH BAHVAN,
PERINGANDOOR DESOM,
THIRUMITTAKODE VILLAGE.**

**BY ADV. SRI.P.VIJAYA BHANU
SMT.MINI JOHN PAREMALIL**

RESPONDENTS/RESPONDENT/COMPLAINANT:

**STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI. P.N. SANTHOSH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

J.B.KOSHY, J.

Crl.R.P.No.491 OF 2000

Dated 26th September, 2007

ORDER

Revision petitioner/accused was found guilty for the offence punishable under Section 279 & 304 of the Indian Penal Code by the Assistant Sessions Judge, Thrissur. He was sentenced to undergo simple imprisonment for one year under Section 304(A) of the Indian Penal Code and simple imprisonment for three months under Section 279 of the Indian Penal Code. In appeal conviction was upheld, but, sentence was modified. Operative part of the judgment of the Sessions Judge is as follows:

"IN THE RESULT:

- a) This appeal is allowed in part.
- b) The verdict of guilty and conviction of the appellant u/s.304-A and 279 IPC are upheld.
- c) But the sentence imposed on the appellant u/s.304-A IPC. is modified and reduced. The sentence imposed on him u/s.279 IPC and the further direction that the sentence shall run concurrently are upheld. The supersession of the sentence imposed on the appellant by the learned Magistrate u/s.304-A I.P.C., the appellant is sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.5000/-. In default of

payment of fine he shall undergo simple imprisonment for a further period of three months.

- d) The appellant is further disqualified from driving any vehicle for a period of one year from the date of endorsement of such disqualification of his driving licence."

Prosecution case is that the accused drove KBR 2849 (Kadampuzha Amma) bus through Thrissur-Shornur road in a rash and negligent manner so as to endanger the personal safety of others on 20-10-1995 and caused the bus to hit against a cyclist Appu alias Chandrasekharan who was riding the bicycle through the western portion of road at 6.15 p.m. and that the bus run over the victim causing his death. The place of occurrence is Thirur Desom. The accused drove the bus in a rash and negligent manner and also in over speed with the knowledge that his act may cause death of others. In 313 statement accused denied the allegations. His defence case was that he was not the driver of the bus.

2. PW1 deposed before the court that himself and the deceased Appu were co-workers and friends, that they are carpenters, that on the date of occurrence they were returning home after their work, that the deceased Appu was

riding the bicycle towards north keeping left side of the road through Shoranur-Thrissur public road, that he was also riding in another bicycle behind Appu, that the incident occurred in between 6 p.m. and 7 p.m. at a place called Thirur, that a bus came from the opposite direction hit against the cyclist Appu and the bus run over the victim causing his death, that the bus was driven in over speed. But, he was declared hostile as he failed to identify the driver of the bus as accused. According to him, driver ran away. PW10, an occurrence witness, identified the number of the offending bus as KBR 2489 'Kadampuzha Amma'. But, he was also declared hostile as he also failed to identify the accused. PW3 was the conductor of the bus at the time of the incident. He deposed before the court that the accused was the driver of the bus at the time of the incident, that the accident happened at about 6.30 p.m., that the bus was coming towards Thrissur, that he had not seen the actual hitting of the bus on the victim, that he does not know the reason for the accident, that he produced Ext.P3 trip sheet book before the police, that Ext.P3(a()) is the trip sheet of the relevant date, wherein the name of the accused is entered as the driver of the bus and that he put his signature in the trip sheet as the conductor. Even though PW3 was declared hostile, he

proved and identified the accused as the driver of the bus which was involved in the accident.

3. PW6 Doctor conducted post-mortem examination on the body of deceased Appu and issued Ext.P7 post-mortem certificate. PW6 opined that the death was due to the head injury. PW7, the then Motor Vehicle Inspector, Thrissur inspected the bus involved in the incident and issued Ext.P8 report. He deposed that the vehicle was having no mechanical defect and that the brake was efficient. PW9 Village Assistant, then attached to Killannur Village, inspected the scene of occurrence and prepared the scene plan, Ext.P10. PW11, then Sub Inspector attached to Viyyur Police Station, registered the crime on the basis of Ext.P1 F.I. Statement furnished by PW1. The F.I.R. has been marked as Ext.P12 through him. PW12 Circle Inspector conducted the investigation in this case. He prepared Ext.P6 inquest report regarding the dead body of the deceased on 21.10.1995 at Thrissur Medical College Hospital. PW5 identified the dead body of the victim and he is a witness to Ext.P6 inquest report. PW12 Circle Inspector inspected the scene of occurrence and prepared Ext.P9 scene mahazar on 21.10.1995, the next day of the incident. PW8 is an attester to Ext.P9 scene mahazar.

M.O.2 series are the glass pieces taken from the scene of occurrence under Ext.P9 scene mahazar. M.O.I is the blood stained cloth worn by the victim. In view of the deposition of PW3 and Ext.P3 trip sheet maintained in the offending bus, it cannot be contended that accused was not the driver of the bus involved in the incident. PW1 and PW10 very clearly deposed before the court that the victim was riding the cycle through the western side of the Shoranur-Thrissur road and that the victim had not come from the side road as suggested by the defence. The scene mahazar (Ext.P9) shows that the tarred road is having a width of 7.85 metres at the place of occurrence and that the place of occurrence is somewhat on the western extremity of the tarred road. As per the scene mahazar the place of occurrence is 62 cms. east from the western extremity of the tarred road. Thus from the evidence of PW1, PW2 and PW10 and Ext.P9 scene mahazar it is very clear that the road is having sufficient width at the scene of occurrence and that the victim was riding through the western extremity of the road keeping the left side of the road. In these circumstances, it is very evident that the accident occurred due to the rashness and negligence of the accused driver. The appellate court found as follows:

"In every accident case it is of crucial importance that the court must try to ascertain the lie of the scene of the occurrence. We get a clear idea about the scene of occurrence from the evidence tendered by the prosecution witnesses as also the data perceived by the investigating officer at the scene of the occurrence described in Ext.P9 scene mahazar. The road at the place of occurrence is broad and the tarred portion of the road has a width of 7.85 metres. The road margins are there on either side of the road and the western road margin a width of 7.60 metres. The eastern road margin has a width of 3.20 metres. Ext.P10 sketch of the scene of occurrence is also available to help the court to draw a clear impression. The spot of occurrence is located at a spot 62 cms to the east of the western kerb. At the scene of occurrence, the Poomala road comes from the east and joins the main road. Broken glass pieces were available at the scene to identify the spot of occurrence. PWs 1,2,3 and 10 have been declared hostile, but their evidence, though hostile gives us a clear picture of the manner in which the accident had taken place. The bus driven by the appellant/accused had cut across entirely to its wrong side of the road and the impact had taken place at a spot close to the western kerb of the tarred road."

After considering the evidence appellate court also found that accident occurred while accused was driving the vehicle rashly and negligently and it occurred at the wrong side of the accused. I see no ground to interfere in the concurrent findings of the courts below in revisional jurisdiction.

Findings are not perverse but based on proper analysis of evidence. With regard to sentence, appellant curt has already taken a lenient view. According to the public prosecutor also for rash and negligent driving, no lenient view can be taken. However, I reduce the punishment of simple imprisonment of six months to three months for the offence punishable under Section 304-A. Fine amount or default sentence is not interfered with. I confirm the conviction and sentence under Section 279 IPC. Therefore, conviction under Sections 279 IPC and 304-A I.P.C. are confirmed. Sentence imposed under Section 279 IPC is also confirmed. Imprisonment awarded under Section 304-A alone is reduced from six months to three months. Fine imposed under Section 304A I.P.C. is not interfered with. All other sentences are confirmed. Substantive sentence of imprisonment need be suffered concurrently. Impugned judgment is modified to the above limited extent and revision petition is disposed of accordingly.

J. B. KOSHY
Judge

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